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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/077,194	12/04/1998	MANFRED BOHN	02481.1596	5713
80522	7590	01/23/2009	EXAMINER	
SANOFI - AVENTIS / FINNEGAN HENDERSON LLP 901 NEW YORK AVE. NW WASHINGTON, DC 20001				STEELE, AMBER D
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MANFRED BOHN,  
KARL THEODOR KRAEMER and ASTRID MARKUS

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Application 09/077,194  
Technology Center 1600

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Mailed: January 23, 2009

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Before PAMELA S. BENNETT, *Review Team Paralegal.*

BENNETT, *Review Team Paralegal.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on August 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**APPEAL BRIEF, EVIDENCE APPENDIX**

An examination of the file reveals that an Appeal Brief was filed on December 21, 2007.

37 CFR 41.37 (2007) states, in part:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

....

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

....

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

The Evidence Appendix is deficient because it does not contain copies of the Plott, Leyden and Wortzman declarations relied upon by appellants on

pages 19-21 of the “Arguments” section of the Appeal Brief. It is noted that Appellants have included statements as to where the evidence appeared in the record. Correction is required.

### **CONCLUSION**

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed December 21, 2007 defective, as required by 37 CFR § 41.37(d);
- 2) to notify Appellants to submit a paper which corrects the “Evidence appendix”;
- 3) to acknowledge and consider the above-noted paper; and
- 4) for such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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